

of my entire concurrence in that Judgment. However this divergence of opinion appears and I think it right I should state my view of the true interpretation of that Section.

But for the passing of Section 857 the Official Assignee would have no power to apply, nor the Court any power to accede to the application of the Official Assignee, for a Grant to him of representation to the estate of a deceased person because as such the Official Assignee would have no *locus standi* to make the application. That Section is intended to make provision for the case of persons dying in this Colony many thousands of miles distant from their homes and families, and therefore from their next-of-kin, or where for some such reason no person is resident in the Colony who can apply to the Court for a Grant of Probate or Letters of Administration to the estate of the deceased.

The Legislature therefore thought fit to confer upon the Official Assignee power to apply to the Court, and upon the Court power to make a Grant to him of the appropriate representation to the estate of such a deceased person but only under certain circumstances.

These circumstances, as I read the Section, are, (1) that the Official Assignee cannot make his application until after a period of six months has expired since the death of the deceased, and (2) that no application for a Grant by an executor or next-of-kin, as the case may be, is impending in the Court either at the time of the application by the Official Assignee, or before his application has been disposed of.

If it appears that some person is applying to the Court for a Grant of Probate of the will of the deceased, or of Letters of Administration to his estate, the Court has no power to grant the application of the Official Assignee until the Executor's petition for Probate, or the petition of the next-of-kin for Letters of Administration has first been refused, or withdrawn, or the Petitioner has failed to proceed with his Petition.

I regard this Section as having been passed for the protection of the estates of deceased persons, and the creditors of and beneficiaries in those estates, and not as limiting or restricting in any way the rights of Executors or next-of-kin.

As to the second matter raised, I entirely agree with the learned President of the Court that the order should be reversed, and that Probate should be committed to the Caveator.

Order accordingly.

Solicitors for the Appellant—

Rodyk & Davidson.

Solicitors for the Respondent—

Donaldson & Burkinshaw.

[ORIGINAL CIVIL JURISDICTION]

HUGGARD, C.J.

July 19, 1934.

N. N. SOCKALINGAM CHETTIAR *alias*
N. N. S. SOCKALINGAM CHETTIAR...Plaintiff

v.

A. R. S. P. PALANIAPPA

CHETTIAR.....Defendant

[SINGAPORE SUIT No. 642 of 1933]

*Limitation of suits—Money deposited—
Repayable on demand—Banker and customer—
Starting point of period of limitation—Ordinance
No. 56 (Limitation), Arts 41 & 42—Account
stated—Right to sue.*

Where two different sums of money were placed in the hands of a Chettiar banker, one on deposit ("thavanai") and the other on current account, on the terms that in the first case the money should be repayable on demand at any time after the expiry of the first three months from the date of the deposit, and that in the other case the amount should be repayable on demand, in a suit for the recovery of both amounts, long after the expiry of the first three months of the deposit account,

Held, that the claim in each case is for money deposited under an agreement that it shall be payable on demand and comes within the purview of Article 42 in the Schedule to Ordinance No. 56 (Limitation) and that the time from which the period of limitation begins to run is the date when the demand for payment is made.

The word "deposit" in Article 42 covers the case of money placed in the custody of a banker by his customer and does not necessarily imply the existence of any fiduciary relationship between the parties.

The plaintiff opened an account with a Chettiar firm in the name of his sister by depositing therein his own money intending it for her maintenance and support. He drew on the account from time to time for her benefit but before the money was exhausted she died,

Held, the balance of the money in the account was the property of the plaintiff, who was entitled to sue for it.

Trial of an action before Huggard, C.J. on the 12th, 13th, 27th, 28th and 29th June and the 3rd July, 1934.

The facts of the case are sufficiently set out in the Judgment below.

Koek for the defendant: The money standing in the account of Seethai Achi, the plaintiff's sister, was her property and after her death only her legal personal representative can sue or give a good discharge for it. There can be no novation in the absence of her legal personal representative so as to entitle the plaintiff to sue. With regard to the defence of limitation, the relationship of banker and customer is that of debtor and creditor: *Foley v. Hill*, 2 H.L.C. 28; *Pott v. Clegg*, 16 M. & W. 321. Indian article 60 before amendment in 1908, corresponded to our article 42, and prior to such amendment it was held in India that a claim for money placed with a native banker was governed by the Indian article 59 (corresponding to our article 41) and not by the Indian article 60: *Icha Dhanji v. Natha*, I.L.R. 13 Bombay 338; *Dharam Das v. Ganga Devi*, I.L.R. 29 All. 773.

K. K. O'Connor for the plaintiff: The account in the name of Seethai Achi was opened by the plaintiff with his own money and it remains his property and he is entitled to sue for it. There is no question of a novation. The money has been admitted to be due to the plaintiff and an account was stated in respect of it. The Bombay and Allahabad cases cited on the limitation point were decided on a misconception of the effect of *Foley v. Hill*, (*supra*): *Joachimson v. Swiss Bank Corporation*, L.R. (1921) 3 K.B. 110. *Mitra on Limitation* 6th edn. vol. II, pp. 1199, 1201, 1202; *Lazard Bros. & Co. v. Banque Industrielle de Moscou*, (1932) 101 L.J.K.B. 65. 90. Compare *Halsbury* 1st edn., p. 586, para 1196 with *Halsbury* 2nd edition, p. 799, para. 1309. *Hart's Law of Banking* 4th edn., p. 189. For this reason the contrary decisions on the Indian Act of 1877 in *Isher Chunder Bhaduri v. Jusmin Kumari Bibi*, I. L. R. 16 Cal. 25, and in *Perundevitayar Ammal v. Nammalvar Chetti & anor.*, I.L.R. 18 Mad. 390 are to be preferred. The amendment effected by the Indian Act of 1908, was made for the purpose of affirming the two latter decisions and so as to make it clear that a customer's money in the hands of a banker payable on demand was a deposit. *Rustomji on Limitation*, 4th edn., p. 414. The word "deposit" has been construed to include all payments of a customer's money to a banker. *Motigavri v. Naranji*, 1927, A.I.R. Bom. 362; *Narayanan Chetty v. Suppiah Chetty*, I.L.R. 43, Madras 629, 632. If the particular transaction may fall either within article 42 (deposit) or article 41 (money lent), then article 42 being the more specific provision applies.

Koek in reply: *Joachimson v. Swiss Bank Corporation*, (*supra*) merely decides that money with a banker is not repayable without a demand. It is still money lent payable on demand: *Macmillan v. London Joint Stock Bank*, L.R. (1918) A.C. 777 at p. 814. The relationship between banker and customer in this Colony is governed by the Law of England: *Civil Law Ordinance S. 5*, and is that of debtor and creditor, not depositor and depositor.

K. K. O'Connor in reply on the new authorities cited: *Civil Law Ordinance S. 5* applies only in the absence of other statutory provision. Article 42 is such a statutory provision. In any event the law of England is that time runs from demand.

Cur. Adv. Vult.

HUGGARD, C.J.—In this action the Defendant is sued as the administrator of the estate of one Suppiah Chettiar deceased for a sum of \$10,553.30 being money alleged to be due to the Plaintiff on deposit and current accounts.

Of this sum of \$10,553.30, \$6,996.71 represents principal and interest on a deposit account,

and \$3,556.59 represents principal and interest on a current account. The interest on the deposit account is calculated to the 8th August, 1931, and the interest on the current account is calculated to the 17th August, 1931. The Plaintiff further claims interest on both these sums at Chitty rate of interest from the 8th and 17th August, 1931, respectively, until payment or judgment.

No dispute arises as to the accuracy of the amounts sued for or as to the further claim for interest.

The Defendant, however, resists the claim on the following grounds. As regards the deposit account he says that the amount standing to the credit of that account was the property of Seethai Achi deceased (an elder sister of the Plaintiff) and not the property of the Plaintiff, and that the Plaintiff has therefore no right to sue for it; and, further, that in any event the claim is barred under Ordinance No. 56 (Limitation). As regards the current account the Defendant contends that the claim is barred under Ordinance No. 56 (Limitation).

It will be convenient to deal first with the issue of fact, namely, whether or not the amount standing to the credit of the deposit account is the property of the Plaintiff.

It is apparent from the documentary evidence which has been produced that several years ago, certainly prior to 1918, a deposit account was opened in the name of Seethai Achi with the firm of K.S.P., in which firm Suppiah deceased was then a partner. The account was credited with interest at regular intervals and in 1926 the amount standing to the credit of the account was \$4,981.84¼. In that year the account was transferred from the K.S.P. firm to the firm of A.R.S.P., of which firm Suppiah deceased was sole proprietor. In the books of the latter firm the account continued to be credited with interest at regular intervals. On the 27th July, 1927, Seethai Achi died but the deposit account continued in her name until 1931. On the 6th February, 1931, the deposit account which then stood at \$6,735.33¾ was, at the request of the Plaintiff to Suppiah, changed from the name of Seethai Achi to the name of the Plaintiff, and from that time it continued in the name of the Plaintiff in the books of the A.R.S.P. firm. On the 8th August, 1931, an account was stated and settled between the Plaintiff and Suppiah at the sum now claimed, namely, \$6,996.71, and this account which has been put in evidence purports to show that the sum mentioned is due to the Plaintiff. Suppiah died on the 13th November, 1931. All the above facts are either admitted or not disputed.

The point that is in dispute is whether the deposit account was the property of the

Plaintiff or the property of Seethai Achi. As to this, the Plaintiff says that it was he who opened the account sometime between 1910 and 1914 by handing to Mutthiah, a partner of Suppiah in the K.S.P. firm, a sum of 4,000 Rupees to be placed to the credit of Seethai Achi. He says that this 4,000 Rupees was money which he got as part of his share of his deceased father's estate and he deposited it in Seethai Achi's name so that the money would be available for her maintenance and support. He states, however, that he never intended to part with the property in this money; that he retained control of it; that Seethai Achi could not draw upon the account without his authority; that both Mutthiah and Suppiah—the partners in the K.S.P. firm—knew of the conditions under which the money was deposited; and that on each of the four occasions upon which the account was drawn upon it was upon his instructions.

The evidence given on behalf of the Defendant on this point is that of Savana Thirupathy who is the attorney of the Defendant. This witness says that he was in the employment of Suppiah during the latter's lifetime and was acquainted with his business; that it is Chitty practice, when an old account is being transferred from one account book to another, for the principal to tell his clerk the circumstances in which the account was originally opened; that in accordance with this practice Suppiah told him of the circumstances in which Seethai Achi's account was opened; and that what Suppiah said was that the money in the deposit account was Seethai Achi's dowry money and her own money.

I am not satisfied that this witness really knows anything about the matter, apart from what appears in the accounts which speak for themselves. On the other hand the Plaintiff, though an extremely stupid witness, appeared to me to be honest and anxious to tell the truth. I therefore find no difficulty in accepting his evidence regarding the deposit account, more especially when his evidence is supported by the following facts. Firstly, it is clear from the accounts produced by the Defendant that two out of the four amounts drawn from the deposit account were sent direct to the Plaintiff, and I accept his uncontradicted evidence that all four drawings were in fact made upon his instructions. Secondly, when in 1926 the deposit account was transferred by Suppiah from the K.S.P. firm to his own firm of A.R.S.P. the transfer was made with the consent of the Plaintiff (this is alleged in paragraph 5 of the Statement of Claim and is admitted in paragraph 3 of the Defence). Thirdly, the inference to be drawn from the documentary evidence is that Suppiah during his lifetime never questioned the

Plaintiff's right to the money standing to the credit of the deposit account, for in February, 1931, at the Plaintiff's request he altered the name of the account from that of Seethai Achi to that of the Plaintiff (vide pages 33 and 39 of Exhibit "A"); in August of that year he furnished the Plaintiff with an account showing a balance of \$6,996.71½ due to the Plaintiff on the deposit account; and later, in 1933, when the Plaintiff was pressing for payment of the amounts standing to credit of both deposit and current accounts there were negotiations for settlement of the whole debt by handing over to the Plaintiff a Promissory Note for 5,000 rupees and transferring also two estates at Muar and Malacca (vide pages 43, 44 and 45 of Exhibit "A"). Fourthly, in the Estate Duty Affidavit sworn by the Defendant in the estate of Suppiah deceased the amount standing to the credit of the deposit account is included in the amount stated to be a debt due to the Plaintiff.

On all this evidence I am satisfied that although the deposit account stood in the name of Seethai Achi, and although she undoubtedly benefited from it from time to time, it was in fact the property of the Plaintiff and I hold that the Plaintiff is entitled to sue for it.

I should add, in reference to paragraph 4 of the Defence, that I am satisfied from the evidence given before me that on the 6th February, 1931, when the deposit account was changed from the name of Seethai Achi to the name of the Plaintiff, Suppiah knew that Seethai was dead, he having been present at her funeral ceremonies in India in 1927. The other allegations in paragraph 4 of the Defence, namely, that in connection with the change in the name of the account the Plaintiff purported to act as the attorney of Seethai Achi, and that his intention was to avoid payment of estate duty on the amount standing to the credit of the deposit account, are unsupported by any evidence whatever.

I now come to the issue of law, that is to say, whether the Plaintiff's claim to the amounts standing to the credit of both the deposit account and the current account is barred under Ordinance No. 56 (Limitation).

For the purpose of considering this issue I find the following facts:—

- (1) That the deposit account was opened at some date prior to 1918 by the deposit of 4,000 Rupees under an agreement that the money should be repayable on demand at any time after the expiry of three months from the date of first deposit, interest being calculated and added to the principal every three months;

- (2) That the current account was opened in 1920 by a *hundi* or draft for 1,606 Rupees sent from India and drawn on the N.N. family account with the K.S.P. firm, this amount being then placed to the credit of the Plaintiff under an agreement that the money should be repayable with interest on demand, interest being calculated from day to day;
- (3) That on the 17th August, 1926, this current account was transferred from the firm of K.S.P. to the firm of A.R.S.P.;
- (4) That on the 17th August, 1931, this current account was stated and settled between the Plaintiff and Suppiah at the sum now claimed;
- (5) That the Plaintiff demanded payment of the amounts standing to the credit of both accounts in January, 1933.

It is obvious that the three months period mentioned in connection with the deposit account has long since expired, so that for the purposes of the present issue both the deposit account and the current account may be regarded as being on the same footing. After the expiration of the three months period there was no material difference between the deposit account and the current account, except as to the method of calculating interest. The amounts standing to the credit of both accounts were repayable on demand, and both accounts could be drawn upon at will. The relationship between the parties therefore was that of banker and customer.

In these circumstances the question I have to consider is whether the position here is governed by Article 41 or by Article 42 of the Schedule to Ordinance No. 56 (Limitation). Or perhaps it would be more correct to put the question in another form. Does Article 42 apply in the present case? If it does, then even though the case might also be covered by Article 41, Article 42, being the more specific provision, must prevail. These two Articles read as follows:—

Description of Suit.	Period of Limitation.	Time from which period begins to run.
41. For money lent under an agreement that it shall be payable on demand.	Three years.	When the loan is made.
42. For money deposited under an agreement that it shall be payable on demand.	ditto.	When the demand is made.

If in the present case Article 41 is the governing Article, then the Plaintiff's claim must fail, as there is no evidence that any acknowledgment of liability (as provided for in section 18 of the Ordinance) was given within three years from the respective dates on which the two accounts were opened. If on the other hand the case falls within Article 42, then the Plaintiff's claim is not barred, as the demand for payment was only made in January, 1933, and there is no evidence of any earlier demand.

The law relating to limitation of actions in force in this Colony is based on the Indian Limitation Act of 1877, Articles 59 and 60 of the Schedule to that Act corresponding exactly to Articles 41 and 42 of the Schedule to our Ordinance as set out above. In considering whether Article 41 or Article 42 governs the present case it is therefore necessary to examine the position in India in regard to the corresponding Articles and to see how those Articles have been judicially interpreted.

Subsequent to the enactment of the Indian Limitation Act of 1877 a number of conflicting decisions were given by the Courts on the question whether suits to recover moneys deposited by a customer with a banker were governed by Article 59 (corresponding to our Article 41) or Article 60 (corresponding to our Article 42), and it would appear that the Courts of Bombay and of Allahabad adopted one view, while the Courts of Calcutta and Madras adopted the other view. In *Ichha Dhanji v. Natha*, (I.L.R. 13 Bombay 338) and in *Dharam Das v. Ganga Devi*, (I.L.R. 29 Allahabad 773) it was held that, as the relationship between a banker and his customer is that of borrower and lender or debtor and creditor, money deposited with the banker under an agreement that it shall be repayable on demand is money lent and therefore suits for the recovery of money so deposited are governed by Article 59. It may be mentioned here that in both of these cases the learned Judges found it difficult to say to what class of cases the Legislature intended Article 60 to apply, but in both cases the view was expressed that it was not intended to apply to a transaction which the law regarded as a loan. On the other hand it was held in *Ishur Chunder Bhaduri v. Jusmin Kumari Bibi*, (I.L.R. 16 Calcutta 25) and in *Perundevitayar Ammal v. Nammalvar Chetti and anor.*, (I.L.R. 18 Madras 390) that suits for the recovery of money deposited with a banker in the circumstances indicated above were governed by Article 60 and not by Article 59, and that therefore time only began to run from the date of the demand for payment.

Now the judgments in the Bombay and Allahabad cases cited above were both based on the decision in the well known case of *Foley v.*

Hill, (2 H.L.C. 28) where it was laid down that the relation between a banker and a customer who pays money into the bank is the ordinary relation of debtor and creditor, with a super-added obligation arising out of the custom of bankers to honour the customer's drafts. Following this decision the learned Judges of Bombay and of Allahabad appear to have considered that the general rule of law would apply, namely, that in the case of money lent repayable on request, no demand is necessary before action, as the debt which constitutes the cause of action arises instantly on the loan (*Norton v. Ellam*, 2 M. & W. 464). They held accordingly, in both cases, that Article 59 applied to such transactions.

In 1921, however, the decision in *Foley v. Hill*, was considered in the Court of Appeal in England in the case of *Joachimson v. Swiss Bank Corporation*, (1921, 3 K.B. 110). That was an appeal from a judgment of Roche, J., who had held, upon the authority of *Pott v. Clegg*, (16 M. & W. 321) and *Foley v. Hill* (*supra*), that a debt owing by a banker to his customer was in the same position as a debt owing by any other debtor and could be sued for without any previous demand. In the Court of Appeal, however, the view was expressed that although there was no doubt that the general opinion of these two decisions, as accepted in some reported cases and as expressed in the text-books, was in accordance with the view taken by Roche, J., still neither decision could properly be regarded as authority for the proposition that no demand was necessary before action. As regards *Pott v. Clegg*, it was pointed out by Bankes, L. J., that the decision in that case turned entirely upon the form of pleading, the Court having intimated during the course of the argument that the point whether a demand was necessary as a condition precedent to the accrual of a cause of action was not open on the pleadings. As regards *Foley v. Hill*, the same learned Lord Justice pointed out that the main question in that case was whether an account between banker and customer, where the former pleaded the Statute of Limitations was the proper subject for a bill in equity, that the point whether a demand was necessary before action was not mentioned or discussed either in the Court below or in the House of Lords, and he then went on to express the opinion that the decision could not be treated as an exhaustive definition of all the obligations arising out of the relation between banker and customer, or as ruling out the possibility of an implied term of that relation, requiring an express demand of repayment as a condition precedent to the right to sue the banker for the amount standing to the credit of the customer's current account. He

further observed that having regard to the peculiarity of the relation between banker and customer there must be quite a number of implied superadded obligations beyond the one specifically mentioned in *Foley v. Hill* and *Pott v. Clegg*, and that it seemed to him impossible to imagine the relation between banker and customer, as it exists to-day, without the stipulation that, if the customer seeks to withdraw his loan he must make application to the banker for it. Warrington and Atkin, L.JJ., delivered judgments to the same effect, and the Court was unanimous in holding that where money is standing to the credit of a customer on current account with a banker, in the absence of a special agreement a demand by the customer is a necessary ingredient in the cause of action against the banker for money lent.

It is apparent therefore that the decision in *Joachimson's* case has effected a very material alteration in the law, or rather what was conceived to be the law, as laid down in *Foley v. Hill* and *Pott v. Clegg*; and the position in England to-day appears to be as follows: the relation of banker and customer is that of debtor and creditor with certain superadded obligations, one of which is, in the absence of a special agreement, an implied obligation on the part of the customer to make an actual demand for the amount standing to his credit on current account as a condition precedent to a right to sue for the amount; and it follows from this that in such cases the Statute of Limitations only begins to run as from the date of demand and not from the date on which the money was deposited with or "lent" to the banker (vide *Halsbury*, 1st edition, Volume 1, page 586, para. 1196 and c.f. with *Halsbury*, 2nd edition, Volume 1, page 799, para. 1390; and vide *Hart's Law of Banking*, 4th edition, page 189).

Now, I venture, with respect, to think that the decisions in *Ichha Dhanji v. Natha* (*supra*) and *Dharam Das v. Ganga Devi* (*supra*), were based on a misconception as to the real effect of the decisions in *Foley v. Hill* and *Pott v. Clegg*, as explained in *Joachimson v. Swiss Bank Corporation*, and that if the learned Judges of Bombay and of Allahabad could have had the guidance of the decision in *Joachimson v. Swiss Bank Corporation*, they would have found no difficulty in holding that Indian Article 60 applied, and not Article 59. They would thus have taken the same view as that adopted by the Courts of Calcutta and of Madras.

That the latter was the correct view, and in accordance with the intention of the Indian Legislature when it introduced Article 60 as a new Article in 1877, appears to me to find support in the action of the Legislature itself in

1908. In that year a new Limitation Act was passed and Article 60 was amended to read as follows:—

“For money deposited under an agreement that it shall be payable on demand, including money of a customer in the hands of his banker so payable.”

The addition of the words underlined of course disposed of the difficulty which had arisen from the conflicting decisions to which I have referred, and made it quite clear that transactions of a customer with a banker in India fall under Article 60 and not under Article 59. But it seems to me that this amendment must be regarded as indicating that the Legislature agreed that the decisions of the Calcutta and Madras Courts had correctly interpreted the Legislature's intention in introducing Article 60 into the Act of 1877. In other words, the 1908 amendment was inserted to remove doubts which had arisen from the conflicting decisions given by the Courts of Bombay and of Allahabad and to make it quite clear that the intention of the Legislature in 1877 was that transactions between banker and customer should be governed by Article 60 (*vide Rustomji on Limitation*, 4th edition, page 414).

The Legislature of this Colony has not thought it necessary to follow the example of India and amend our Article 42 by inserting the words added there in 1908 to the corresponding Article, but possibly that is because there have been no conflicting local decisions on the point. Our Articles 41 and 42 therefore still correspond to the Indian Articles 59 and 60 as they stood prior to 1908.

In all these circumstances I am of opinion that the Article which governs the present case is Article 42 and that Article 41 is excluded by the more specific provision. The Plaintiff's claim is therefore not barred by limitation.

I do not think that any difficulty arises from the use of the word “deposited” in Article 42. It has been held in *Motigavri v. Naranji Dwarkadas*, (A.I.R. 1927, Bombay 362) that the word “deposit” in the corresponding Indian Article 60 covers all payments of the customer's moneys made to the banker which make up the credit balance in favour of a customer in the banker's hands. I think it is correct to say that money placed in the custody of a banker in circumstances such as in the present case is “deposited” within the meaning of the Article in question, and that the use of the expression “deposit” does not necessarily imply the existence of any sort of fiduciary relationship.

On the view I take of the law and on the facts as I have found them the Plaintiff is entitled

to judgment for the amount claimed with costs.

Judgment accordingly.

Solicitors for the Plaintiff—*Drew & Napier*.

Solicitors for the Defendant—*Chan & Eber*.

[ORIGINAL CIVIL JURISDICTION]

WHITLEY, J.

July 18, 1934.

CHEAH EWE CHONG & Anor.....Plaintiffs.

v.

CHEAH KEE EE & 15 Ors.....Defendants.

[PENANG SUIT No. 280 of 1933]

Charities — Practice — Position of Attorney General in suit for removal of trustees on ground of maladministration—Ordinance No. 22 (Crown Suits), S. 59.

A suit concerning the administration of charities in the Colony in which the commission of various breaches of trusts is alleged against the trustees of the Estate should be commenced in the name of the Attorney General as plaintiff.

Yeo Him & Ors. v. Yeo Cheng Kang & Ors., 4 Ky. 500 considered.

The true effect of section 59, Ordinance No. 22 (Crown Suits) is that in suits regarding charities and public interests the practice and the position of the Attorney General shall be substantially the same as in England and that where he would be plaintiff in England he should be plaintiff in this Colony and where he would be a defendant in England he should be a defendant in this Colony.

Chua Sin Ghee v. Chua Tian Choon, (1933) S.S.L.R. 559; 2 Mal. L.J. 259 considered and distinguished.

Where the proceedings are defective by reason of the non-joinder of the Attorney General as plaintiff, the defect may by amendment of the Writ of Summons and Statement of Claim be cured and the action proceed with the leave of the Attorney General.

Trial of an action heard before Whitley, J. on the 13th July, 1934.

This is an action brought by the members of the *Seh Cheah Kongs*i (*Cheah* tribal society) against the trustees of the *Kongs*i. The Attorney General was added as one of the defendants under S. 59 of Ordinance No. 22 (Crown Suits). The plaintiffs claimed execution of the trusts of the *Kongs*i, removal of the trustees, accounts and other reliefs. The Statement of Claim alleged, *inter alia*, various breaches of trusts committed by the trustees. At the trial Counsel for defendants 1—15 inclusive took the preliminary objection that the action was wrongly instituted by the plaintiffs who had no *locus standi* as it concerned a public charity and contended that the Attorney General alone was entitled to sue.

Conaghan (*Hume* with him) for Plaintiffs.

Hogan (*De Buriatte* with him) for Defendants 1—15.

W. C. Taylor, Deputy Public Prosecutor, for the Attorney General of the Straits Settlements.

Cur. Ad. Vult.